

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance. Upon further consideration of the issues raised with respect to the outstanding grounds of rejection, the arguments presented by Applicant in the Appeal Brief filed 10 September 2009 are found persuasive. While the closest known prior art has been applied to the claims, the art does not appear to recite all of the features and the arrangement thereof set forth in the claims. With reference to the rejection mailed 23 December 2008, Examiner acknowledged that Kapandji did not show the limitation added by Applicant to the claims filed 29 September 2008 that the head is a separate component from the stem. In response to the amendment, however, the rejection maintained that it would have been obvious to have formed the elements (the formerly integral structure) as separate components, in light of *Nerwin v. Erlichman*, 168 USPQ 177, 179, to facilitate manufacturing or to facilitate a minimally invasive procedure. However, Applicant's arguments against Kapandji are persuasive (see, e.g., page 5, line 21 - page 8, line 8). The element identified as a head is a female open cavity that attaches to a male articulating head, and the rejection does not show how the articulating structure could be made separable so the identified head could attach to the stem. In addition, upon further consideration, it is clear that the suture holes that must be at or near the second end, where the head attaches, are actually on a portion that would be inserted into a medullary canal, which corresponds to the claimed first end. In addition, the device of Kapandji technically may have a triangulated profile as viewed from the side, and as seen in the rejection (page 6), but there is no triangular profile when viewed from a

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distal end or a teaching that it would be suitable for or configured for the claimed use of mating with the sigmoid notch of the distal radius.

Applicant's arguments against the rejection over Cooney III et al. in view of Stubstad have also been found to be persuasive. Regarding limitations found in the independent claims, the references fail to teach a triangulated configuration when viewed from a distal end (see, e.g., page 12, lines 4-22), the head having a through-bore (see, e.g., page 13, line 3 - page 14, line 2), and the stem having holes for receiving sutures or holes through a platform (see, e.g., page 14, line 9 - page 16, line 6). As it is believed that the best art is of record and does not show or render obvious the claimed invention, the claims are thus allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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